IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL MISC. APPLICATION NO. 439 OF 2007
IN
CRIMINAL APPLICATION NO. 4395 OF 2006

Farida Hoosenally ..Applicant

Vs.

1. Sanjay Leela Bhansali and ors. ..Respondents

Mr. M.P. Rao with Mr. Rakesh Kumar i/by M/s. Legal Vision for applicant.

Mr. Nitin Pradhan with Mrs. S.D. Khot, Mr. A.H. Ponda and Mr. Sanjay Parab for respondent no.1.

Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 04, 2007.

P.C.:

1. Heard the learned counsel for the respective parties. Criminal Application No. 4395 of 2006 was heard by me on 13/7/2007 and it was admitted. Interim relief in terms of prayer clause (c) but only restricted to the applicant therein was granted and the trial of the Criminal Case i.e. C.C. No.1800/PS/2006 was directed to be continued against

the other accused.

2. This Misc. Application has been presented on or about 21/7/2007 and it prays for vacating the order dated 13/7/2007. The main ground in filing this application is that the learned Advocate representing the present applicant i.e. original respondent no.6 was not heard.

3. The present applicant - original respondent no.6 has filed Criminal Complaint No.43/M/06 before the learned Metropolitan Magistrate, 26th Court at Borivali, Mumbai on or about 24/2/2006 for the offences punishable under Sections 3 and 7 of the Essential Commodities Act read with Sections 10 and 10A of the said Act read with Para 3 of the LPG (Supply and Distribution) Order, 2000 or in the alternative directing Police authorities under Section 156(3) of Cr.P.C. to register the cognizable offence and conduct due investigation as per law. The applicant came to be impleaded as accused no.1 and accused nos.2 to 5 are other co-accused and accused no.6 is listed to be other unknown persons.

4. After hearing Mr. Pradhan the learned counsel for the applicant on 13/7/2007 for about 45 minutes, I had passed the order sought to be recalled by this Misc. Application and I had perused the orders passed by this court from time to time, the report submitted by the Investigating Officer, the investigation report submitted by the police and the charge-sheet filed on 6/11/2006 along with the annexures, which included statements of several witnesses. The complaint filed by the present applicant is regarding the incident of fire that had taken place on 18/2/2004 around 8.30 p.m. at Studio No.16 of Filmcity at Mumbai (Aarey Colony, Goregaon (East)). The report of the Investigating Officer dated 12/3/2004 concluded that there was a possibility of electric spark illuminating from the defective/damaged socket or wiring which is used continuously without being maintained properly. The I.O. more particularly noted that on going through the statements of the eye witnesses recorded, the cause of fire was "Defective Electric Circuit".

While concluding the report he stated as under:-

> "..In this case possibility of the supposed cause of fire by ruling out the other causes

one by one and going through the statement of eye witnesses and observance, more particularly the statement of eye witness Shri Santosh Waikar who had given the firm and factory, that the fire had originated in the electrical heavy duty socket used for bulbs, halogens etc. which was already on since last about few minutes before fire and the fire had started in the same socket with cracking sound."

. The police report annexed to the charge-sheet clearly indicated that on the set which was gutted in fire two LPG Cylinders registered in the names of Mr.Sandeep Parab and Mr. Karunakar Shukla were found. These two consumers had stated that they had provided the cylinders to the Set Production Manager Shri Gajendra Mishra on his request. Accused No.1 was not around or in the vicinity of the place of fire when the fire had taken place. Accused No.2 was claimed to be the Executive Producer and against accused nos.3 to 5 no charge-sheet has been filed. The complaint dated 9/3/2006 states in para 4.5 that the main allegation in the complaint is related to dishonest diversion and

illegal use of domestic gas cylinders mainly through the route of black marketing and fraud. It is further pointed out that domestic gas cylinders could not have been on the set when the shooting of the film "Black" was to be done and those cylinders were supplied for domestic category customers.

5. The learned counsel for the present applicant-complainant referred to the agreements to which the complainant is not a party and based on these agreements it was sought to be argued that it is accused no.1 who is the main responsible person for the production of the film and, therefore, he is the main accused in the incident of fire that had taken place on 18/2/2004. It was also submitted that after the charge-sheet was filed, there was no reason to stay the trial of the case against accused no.1 and consequently the interim relief granted by this court was required to be vacated.

6. At the first instance it needs to be stated that when an order is passed in the Criminal Application, there is no question of review of such an order. But it was claimed that the order was passed

without hearing the learned counsel for the complainant though he was present before this court. When a learned Member of the Bar makes such a grievance, it needs to be addressed to and therefore, I decided to revisit the order dated 13/7/2007 to the extent of interim relief granted in favour of the accused no.1.

6A. Admittedly, though the fire had taken place on 18/2/2004, for the first time the complainant approached the Dadar Police Station in April/May 2005 i.e. after 15 months. The second complaint was filed on 12/8/2005 with the Aarey Police Station, followed by a third complaint on 26/10/2005 to the very same police station. The complainant approached the Court of the learned Metropolitan Magistrate on or about 9/3/2006 i.e. after two years of the incident of fire on the sets of the film "Black" which was under shooting/production. On the Original Side of this court, Civil Suit No.1774 of 2007 has been filed by M/s. Shantez and M/s. Faheen Designs (both partnership firms) and the plaint has been verified by Shri Aiyub Hoosenally claiming to be partner of plaintiff no.1 and the complainant claiming to be the

partner of plaintiff no.2. The suit has been presented on or about 23/4/2007. The substantial relief in the said suit is for the recovery of damages arising from the incident of fire. In the said suit the accused no.1 has been impleaded as Defendant No.3 and there is no relief prayed for against him either jointly or severally and the claim in the said suit arises from the damages caused due to or attributable to the fire that had taken place on 18/2/2004. Prima facie, it was clear from the I.O.'s report that the cause of fire did not relate to the gas cylinders and the I.O. was from the Fire Department of the Mumbai Municipal Corporation. The police report only indicated that empty cylinders were found on the set and the statements recorded of the witnesses and annexed to the charge-sheet do not, prima facie, indicate that the case of fire originated from the LPG Gas Cylinders. Even otherwise, the accused no.1 who was the Producer of the film was not anywhere in the vicinity of the place where the incident of fire took place and even the police report does not indicate, prima facie, that he was responsible in requisitioning or in any way misusing or illegally these gas cylinders.

7. I, therefore, do not find any case made out even in the present Misc. Application to vacate the order dated 13/7/2007 passed in favour of accused no.1. Hence, this application is rejected.

(B.H. Marlapalle,J.)